



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Machi Chumba (Deceased) (Succession Cause  
E107 of 2023) [2025] KEHC 10533 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10533 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E107 OF 2023  
RN NYAKUNDI, J  
JULY 18, 2025**

**RULING**

1. What is pending before me for determination are Summons for Confirmation of Grant dated 11<sup>th</sup> day of May 2025 premised under section 71 of the *Law of Succession Act* and Rule 40 of the Probate and Administration Rules where the Applicants are seeking the following orders:
  - a. The grant of Letters of Administration issued by this honorable court on 7<sup>th</sup> day of November 2023, to Julius Kipkoech Chumba of P.O Box 10664 Eldoret be confirmed and the estate be divided in terms of the annexed mode of distribution
  - b. The costs of this application be provided for and in any event be in the cause
2. The summons is based on the following grounds among others:
  - a. That the grant was rightly made to the Petitioner who is now administering and shall continue to administer the estate according to the law.
  - b. That requisite statutory period of Six (6) months has lapsed since the grant was made and no known objection has been raised from the date the Grant was issued.
  - c. That all beneficiaries are in agreement that the said Grant be confirmed and the estate property be divided in terms of the annexed mode of distribution.
  - d. That it would be in the interest of justice that this application for Confirmation of Grant be granted as prayed.
3. The Application is supported by the annexed affidavit dated 11<sup>th</sup> June 2025 sworn by JULIUS KIPKOECH CHUMBA who avers as follows:
  - a. That Julius Kipkoech Chumba the Petitioner and Administrator of the estate of Machii Chumba (Deceased) who died intestate on the 20/09/2009.
  - b. That I ordinarily reside at Kongasis in Uasin Gishu County within the Republic of Kenya.



- c. That Grant of Letters of Administration intestate was made to us on this matter on 7/11/2023.
- d. That the deceased died on 20.9.2009 and was survived by the following dependants;



1. MARY JESANG CHUMBA	WIDOW WIDOW	ADULT ADULT
2. PAULINA PAKCHIBEI		
3. JAMES KIPKERING SAMBU	SON	DECEASED
4. TECLA JEPCHOGE CHUMBA	DAUGHTER	ADULT
5. THOMAS KIPYEGO	SON	ADULT
6. BARNABA KIPKOSGEI CHUMBA	SON	ADULT
7. NOAH KIPROP	SON	ADULT
8. MARTHA JEPKEMBOI CHUMBA	DAUGHTER	ADULT
9. LILIAN JELAGAT CHUMBA	DAUGHTER	ADULT
10. JOSHUA KIBET BIRECH	SON	ADULT
11. VIOLA JEPNGETICH CHUMBA	DAUGHTER	ADULT
12. OGLA JEPTARUS CHUMBA	DAUGHTER	ADULT
13. SIMION KIPTOO CHUMBA	SON	ADULT
14. JONAH CHERUIYOT CHUMBA	SON	ADULT
15. NORAH JEMESUNDE	DAUGHTER	ADULT
16. SYLVESTER KIPTUM CHUMBA	SON	ADULT
17. NICHOLUS KIPKENEI CHUMBA	SON	ADULT
18. JULIUS KIPKOECH CHUMBA	SON	ADULT



19. NELLY JERUTO CHUMBA	DAUGHTER	ADULT
20. SAMWEL KIPROTICH CHUMBA	SON	ADULT
21. ZAKARIA KIPRUGUT	SON	ADULT
22. EMILY JEMELI	DAUGHTER	DECEASED

- e. That there are no other dependants of the deceased.
- f. That the identification of shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows: -

ASSETS

1. SOY/KAPSANG BLOCK 1(KIMILILI)/1X7 Measuring Approximately 3.52 Hectares or thereabouts  
 BENEFICIARY SHARE OF BENEFICIARY  
 2<sup>ND</sup> HOUSE TOTAL ACARAGES 4.4 ACRES  
 PAULINA PAKCHIBEI 3.0 ACRES  
 JULIUS KIPKOECH CHUMBA 1.4 ACRES  
 1<sup>ST</sup> HOUSE TOTAL ACARAGES 4.4 ACRES  
 EURSALAH JEROTICH SAMBU 4.4 ACRES
2. SOY/KIPSANGUI BLOCK 5(KIPSANGUI)/1X0 Measuring Approximately 42.04 Hectares or thereabouts  
 SHARED EQUALLY INTO THE TWO HOUSEHOLDS AS FOLLOWS;  
 BENEFICIARY SHARE OF BENEFICIARY  
 2<sup>ND</sup> HOUSE 47 ACRES
  1. PAULINA PAKCHIBE 4 ACRES  
 (HOLDING IN TRUST OF RAEL JEPKURUI AND MERCY CHEBUNGEI (MINORS))
  2. SIMION KIPTOO CHUMBA 5.3 ACRES
  3. JONAH CHERUIYOT CHUMBA 7.7 ACRES
  4. NORAH JEMESUNDE 1.5 ACRES
  5. SYLVESTER KIPTUM CHUMBA 5.3 ACRES
  6. NICHOLUS KIPKENEI 5.1 ACRES
  7. JULIUS KIPKOECH CHUMBA 5.1 ACRES
  8. NELLY JERUTO CHUMBA 1.5 ACRES
  9. SAMMY KIPROTICH CHUMBA 5.3 ACRES



10. ZAKARIA KIPRUGUT CHUMBA 5.3 ACRES  
1<sup>ST</sup> HOUSE 47 ACRES
1. MARY JESANG CHUMBA 9 ACRES
2. THOMAS KIPYEGO 7 ACRES
3. BARNABA KIPKOSGEI CHUMBA 8 ACRES
4. ELIJAH TIROP 1.5 ACRES
5. TITO KIMUTAI SAMBU 1.5 ACRES
6. NOAH KIPROP 7 ACRES
7. KIBET BIRECH 7 ACRES
8. MARTHA JEPKEMBOI 1 ACRES
9. TECLA JEPCHOGE CHUMBA 1 ACRE
10. LILIAN JELAGAT 1 ACRE
11. VIOLA JEPNGETICH CHUMBA 1 ACRE
12. OGLA JEPTARUS CHUMBA 1 ACRE

- g. the foregoing proposal on distribution is based on our fair assessment that all the beneficiaries have been fairly provided for.
- h. That the deceased's estate has no liability.
- i. That no application for the provision of dependants is pending.
- j. That I have not embarked on distribution of the deceased's estate and shall not do so until after the confirmation of the said Letters of Administration.
- k. That I swear this affidavit in support of the summons of confirmation of Grant aforesaid.
- l. The foregoing proposal on distribution is based on our fair assessment that all the beneficiaries have been fairly provided for.
- m. That the deceased's estate has no liability.
- n. That no application for the provision of dependants is pending.
- o. That I have not embarked on distribution of the deceased's estate and shall not do so until after the confirmation of the said Letters of Administration.

4. As a rejoinder Joshua Kibet Birech deponed as follows:

1. That pursuant to this Honorable Court's directive issued on 12<sup>th</sup> June 2025, I hereby submit this affidavit proposing an equitable mode of distribution over the estate of my late Father, Machii Chumba who died intestate on 20<sup>th</sup> September 2009.



2. That I serve as a co-administrator of the estate, alongside Julius Kipkoech Chumba, a son of the deceased, who represents the interests of the second house (children from the second marriage), while I represent the first house.
3. That this affidavit is made both on my own behalf and on behalf of my nine (9) other siblings and my mother:
  - a. Mary Jesang Chumba
  - b. Nelet James Kipkering Sambu (deceased)
  - c. Tecla Chepchoge Chumba
  - d. Thomas Kipyego
  - e. Barnaba Kipkosgei Chumba
  - f. Noah Kiprop Chumba
  - g. Martha Chepkemboi Chumba
  - h. Lilian Chelagat Chumba
  - i. Viola Chepngetich Chumba
  - j. Ogl Jeptarus Chumba whose express consent I have obtained in advance for purposes of this submission.
4. That the deceased Nelet James Kipkering Sambu is represented herein by his son Elijah Tirop and Ursila Jerotich Sambu to represent the interest of his estate.
5. That the deceased, MACHII CHUMBA, was lawfully married twice during his lifetime, and from these two unions arose two separate households.
  1. THAT his first marriage was to Mary Jesang Chumba, who has survived the deceased Machii Chumba
  2. THAT the union between the deceased and Mary Jesang Chumba was blessed with ten (10) children:
    - a. Joshua Kibet Birech
    - b. Nelet James Kipkering Sambu (deceased)
    - c. Tecla Chepchoge Chumba
    - d. Thomas Kipyego
    - e. Barnaba Kipkosgei Chumba
    - f. Noah Kiprop Chumba
    - g. Martha Chepkemboi Chumba
    - h. Lilian Chelagat Chumba
    - i. Viola Chepngetich Chumba
    - j. Ogl Jeptarus Chumba



6. That Paulina Chepkibei, became the second lawful wife of the deceased.
7. That for purposes of clarity and consistency throughout the remainder of this affidavit:
  - a. The term House 1 shall refer to the Ten children of the deceased and his first wife, Mary Jesang Chumba; and
  - b. The term House 2 shall refer to Paulina Chepkibei and her children.
8. That I organized and convened the first house family meetings attended by members of the first house, including:
  - a. The deceased's widow Mary Jesang Chumba;
  - b. All surviving nine (9) children of the deceased (from House 1).
  - c. Elijah Tirop and Ursila Jerotich Sambu representing the interest of my deceased brother Nelet James Kipkering Sambu
9. That the primary goal of these meetings was to explore the possibility of a peaceful and unified path to estate administration through dialogue and mutual respect.
10. That we agreed as follows:
  - a. The deceased left behind two parcels of land to the first house (the second house having completed their distribution before this Honorable court) being
  - b. The deceased left behind two parcels of land to the first house (the second house having completed their distribution before this Honorable court) being SOY/KIPSANGUI BLOCK 5 (KIPSANGUI)/1X0 measuring approximately 94 acres which was divided into two and thereof the first house was apportioned 47 acres. SOY/KAPSANG BLOCK 1 (KIMILILI)/1X7 measuring approximately 8.8 acres.
  - c. The first land parcel number SOY/KIPSANGUI BLOCK 5 (KIPSANGUI)/1X0 measuring approximately 47 acres be distributed as follows:



NAME	ACREAGE(ACRES)	ID.NO
Mary Jesang Chumba	3.5	703274104
Joshua Kibet Birech	7	20397213
Elijah Tirop	7	24447432
Tecla Chepchoge Chumba	1	7136973
Thomas Kipyego	7	11180819
Barnaba Kipkosgei Chumba	8	10948046
Martha Chepkemboi Chumba	2	12971X78
Noah Kiprop Chumba	7	12971222
Lilian Chelagat Chumba	1	12638490
Viola Chepngetich Chumba	1	23187710
Ogla Jeptarus Chumba	2	24857831

- d. The second land parcel SOY/KAPSANG BLOCK1 (KIMILILI)/1X7 measuring approximately 8.8 acres be distributed to Ursila Jerotich Sambu entirely.
- e. The actual boundaries to be determined by the surveyor.

## DECISION

5. I have considered the affidavit by the petitioners' and the representatives of the beneficiaries of the other house by name Julius Kibet Birech.

### The Applicable Principles of Law

6. First and foremost, the facts of this case are in support of section 40 of the *Law of Succession Act* in Kenya which addresses the distribution of an intestate estate where someone dies without a will in polygamous situations. It stipulates that the estate should be divided among the "houses" based on the number of children in each house, with wives also receiving a share. Several High court cases have interpreted and applied this section, clarifying its application in various scenarios.
7. The key principles of this provision include with the following:

Division by houses: the core principle is to divide the estate into units, one for each house within the polygamous family

Number of children: the number of children in each house determines the proportion of the estate each house receives.



Wives' shares: surviving wives are also considered beneficiaries and are allocated a share, in addition to the units for their respective houses.

Equal distribution: while the initial division is by houses, within each houses, the estate is generally divided equally among the children.

8. The specifics of this section provides as follows:

- a. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children;
- b. The rights of children are encapsulated in sections 35(2) (3) (5) and 38 of the [Law of Succession Act](#). Section 35(2) (3) (5) provides as follows:
  - i. '35(2) A surviving spouse shall, during the continuation of life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
  - ii. (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.
  - iii. (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children?'

Section 38 provides as follows:

'Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.'

9. In this respect section 3 (2) of the Act incorporates Art 27 (1) (2) (3) (4) of [the constitution](#) which provides as follows:

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms
- (3) Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres
- (4) The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion conscience, belief, culture, dress, language or birth



10. On the other hand, Parliament was very intentional by crafting section 3(2) of the succession Act which expressly states in reference to child or children include:

‘References in this Act to ‘child’ shall include a child conceived but not yet born (as long as that child is subsequently born alive) and in, relation to a female person, a child born to her out of wedlock, and, in relation to a male person, a child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.’

11. The Court of Appeal in *Rono vs Rono* way back in 2005 address the provisions of section 40 of the Act by reminding the courts that the number of children in each house must be taken into account and by the Act of God sometimes the children sired by each household may not be equal in number. For example, house A may be blessed with 5 children whereas house B and C may each be having 8 or 10 children’s respectively. It is also clear under the law that both biological children from a legally recognized union under the *marriage Act* of Kenya and those born outside wedlock are protected and guarantee inheritance for purposes of succession.
12. The codification of the *law of succession Act* way back in 1981 on enactment aligned itself with the provisions of international law which form part of our sources of law as ingrained in Art 2 (5) (6) of *the constitution*. The statute embraces the noble idea that men and women should have the equal right to inherit property. The legislative scheme under section 3(2), 35, 36, 37, 38 as construed and interpreted purposively with section 40 of the same Act one can say it is a legal system that protect and guarantees the maxim of equity on matters of inheritance. Admittedly, largely so the transmission of inheritance right continued being bedeviled with cultural practices and customary laws which tend to discriminate women as against males from the same bloodline. The supreme law of the land promulgated in 2010 provides as follows in Art 1 and 4 as follows:
- (1) This constitution is the supreme law of the Republic and binds all person and all State organs at both levels of government
  - (4) any law, including customary law, that is inconsistent with this constitution is void to the extent of the inconsistency, and any act or omission in contravention of this constitution is invalid
13. The rule of law enforced by the law under this constitution is the ultimate controlling factor on which our governance is stipulated in Art 10 of the same constitution is based. In a similar differential approach culture and customary law in many of our communities and tribes discriminate openly against married daughters from the same biological lineage on grounds that they have left their parents’ home to co-create another family union within the same community of birth or other subtribe or far distance tribes from her heritage. There is a presumption that a daughter having been married and solemnized a marriage union within the specifics of the *marriage Act* is assumed not to be part of a direct lineage. The essence of it is that there have no rights of inheritance as they would acquire rights in that other family of marriage. In my considered view it is a such a raw deal given the equality doctrine of Art 27 of *the constitution* that in the 21<sup>st</sup> century a constitutional democracy like our Republic women suffer discrimination for reasons of culture, marital status, gender, sex or birth etc.
14. As noted in Article 2(5) (6) of *the constitution* International law forms part of our jurisprudential development and an element of constitutionalism. The very reason why the drafters of Article 21 of the Mabuto protocol articulated widow’s rights to inheritance as well as gender equality on both men and women. The same protocol went further to provide the rights of the surviving spouse to live in the matrimonial home upon demise of the other spouse. In Article 23 of International convention on Civil and Political rights articulates equality of rights and responsibilities of spouses as t marriage, during



marriage and at its dissolution. It specifies that women should have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one spouse. Whereas Article 16 (h) of CEDAW specifically prescribes the same rights for spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

15. The UN Committee on Elimination of discrimination against women recommendation 29 observe as follows:

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.

16. It is the duty of this court when considering issues of inheritance to remember that it has a constitutional obligation to craft and mold a decision on succession devolution of rights in accordance with the spirit, purport and objects of the Bill of Rights in chapter 4 of *the constitution*. The constitutional court of South Africa on the context of the equality clause in the case of Minister of Finance Vs Van Heerden [2004] ZACC 3 121 held as follows:

“The achievement of equality goes to the bedrock of our constitutional architecture. *The constitution* commands us to strive for a society built on the democratic values of human dignity, the achievement of equality, the advancement of human rights and freedom. Thus the achievement of equality is not only a guaranteed and justiciable right in our Bill of Rights but also a core and foundational value; a standard which must inform all law and against which all law must be tested for constitutional consonance.”

17. Also on the same jurisdiction one can borrow a leaf on this core principle as elucidated in the case of Fraser v Children's Court, Pretoria North [1997] ZACC 1 in which it was observed that there can be no doubt that the guarantee of equality lies at the very heart of *the constitution*. It permeates and defines the very ethos upon which *the constitution* is premised. Equality as a founding value underpins our constitutional democracy and informs public policy.

18. Is therefore bears emphasis in my judgment this court is bound by the constitutional National values and principles of governance in Art 10 as read with the provisions of sections 3(2), 35, 36, 37, 38, 40, 41 & 42 of the *law of succession Act* that any distribution which deprives the children of the deceased and the surviving spouse the measure of the doctrine of equity in sharing of the intestate estate will be inconsistency with the sphere on the application of the Bill of Rights and Art 40 on the rights to private property.

19. On account of this I am of the considered view that the model of distribution by Julius Kipkoech Chumba is more aligned to the principles under the succession Act and more importantly on the equality clause under Article 27 of *the constitution*. As a consequence, therefore the intestate estate shall be distributed as follows:

- a. That the surviving spouses are entitled to a life interest of the estate in equal shares with the surviving children as expressly stated under sections 38 and 40 of the laws of succession Act.
- b. That the estate of the Deceased shall be distributed using the following distribution matrix;



ASSETS.

1. SOY/KAPSANG BLOCK 1(KIMILILI)/1X7 Measuring Approximately 3.52 Hectares or thereabouts  
BENEFICIARY SHARE OF BENEFICIARY  
2<sup>ND</sup> HOUSE TOTAL ACARAGES 4.4 ACRES  
PAULINA PAKCHIBEI 3.0 ACRES  
JULIUS KIPKOECH CHUMBA 1.4 ACRES  
1<sup>ST</sup>HOUSE TOTAL ACARAGES 4.4 ACRES  
EURSALAH JEROTICH SAMBU 4.4 ACRES
2. SOY/KIPSANGUI BLOCK 5(KIPSANGUI)/1X0 Measuring Approximately 42.04Hectares or thereabouts  
SHARED EQUALLY INTO THE TWO HOUSEHOLDS AS FOLLOWS;  
BENEFICIARY SHARE OF BENEFICIARY  
2ND HOUSE 47 ACRES
  1. PAULINA PAKCHIBE 4 ACRES  
(HOLDING IN TRUST OF RAEI JEPKURUI AND MERCY CHEBUNGEI(MINORS))
  2. SIMION KIPTOO CHUMBA 5.3 ACRES
  3. JONAH CHERUIYOT CHUMBA 7.7 ACRES
  4. NORAH JEMESUNDE 1.5 ACRES
  5. SYLVESTER KIPTUM CHUMBA 5.3 ACRES
  6. NICHOLUS KIPKENEI 5.1 ACRES
  7. JULIUS KIPKOECH CHUMBA 5.1 ACRES
  8. NELLY JERUTO CHUMBA 1.5 ACRES
  9. SAMMY KIPROTICH CHUMBA 5.3 ACRES
  10. ZAKARIA KIPRUGUT CHUMBA 5.3 ACRES  
1<sup>ST</sup> HOUSE 47 ACRES\
  1. MARY JESANG CHUMBA 9 ACRES
  2. THOMAS KIPYEGO 7 ACRES
  3. BARNABA KIPKOSGEI CHUMBA 8 ACRES
  4. ELIJAH TIROP 1.5 ACRES
  5. TITO KIMUTAI SAMBU 1.5 ACRES
  6. NOAH KIPROP 7 ACRES



7. KIBET BIRECH 7 ACRES
  8. MARTHA JEPKEMBOI 1 ACRES
  9. TECLA JEPCHOGE CHUMBA 1 ACRE
  10. LILIAN JELAGAT 1 ACRE
  11. VIOLA JEPNGETICH CHUMBA 1 ACRE
  12. OGLA JEPTARUS CHUMBA 1 ACRE
- c. That each party shall bear their own costs.
- d. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 18<sup>TH</sup> JULY 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

